

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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2007 DEC 19 AM 10:23

STATE OF TENNESSEE, *ex rel.* )  
ROBERT E. COOPER, JR. )  
ATTORNEY GENERAL AND REPORTER )  
 )  
Petitioner, )  
 )  
v. ) No. \_\_\_\_\_  
 )  
ENERGY AUTOMATION SYSTEMS, )  
INC., a Tennessee corporation and )  
ENERGY PROJECT ASSURANCE )  
CORPORATION, a Tennessee corporation, )  
 )  
Respondents. )

RICHARD W. HOOKER, CLERK

*RL*

**ASSURANCE OF VOLUNTARY COMPLIANCE**

The State of Tennessee, by and through, Robert E. Cooper, Jr., the Attorney General and Reporter ("Attorney General"), at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Division"), accepts this Assurance of Voluntary Compliance ("Assurance") given by Energy Automation Systems, Inc., a Tennessee corporation (hereinafter "EASI") and Energy Project Assurance Corporation, a Tennessee corporation (hereinafter "EPAC") of Hendersonville, Tennessee, ("Respondents").

**WITNESSETH:**

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

- A. The Division and the Attorney General conducted an investigation of specific

business practices of Respondents, specifically the sale of EASI dealerships based on certain representations made in the Respondents' advertising materials, including, but not limited to, several Internet websites now or formerly owned and operated by EASI. Respondents' business practices are more fully described in the Petition. As a result of the investigation, the Division and the Attorney General have alleged that certain acts and practices of Respondents violated the Tennessee Consumer Protection Act of 1977, TENN. CODE ANN. § 47-18-101, et seq. (the "Act").

B. Respondents deny any wrongdoing. Further, pursuant to TENN. CODE ANN. § 47-18-107(c), acceptance of this Assurance by Respondents shall not be considered an admission of a prior violation of the Act.

C. Therefore, pursuant to TENN. CODE ANN. § 47-18-107, Respondents desire to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to TENN. CODE ANN. § 47-18-107, Respondents give, and the Attorney General accepts, the following assurances:

### **1. DEFINITIONS**

As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

- 1.1 "Assurance of Voluntary Compliance" or "Assurance" shall mean and refer to this document entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee v. Energy Automation Systems, Inc., a Tennessee corporation and Energy Project Assurance Corporation, a Tennessee corporation*.
- 1.2 "Attorney General" shall mean and refer to the Office of the Tennessee Attorney General and any employees acting on its behalf.

- 1.3 "Consumer" means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- 1.4 "Covered Conduct" means, and is limited to, representations, statements and advertisements, made to potential consumer purchasers of an EASI dealership or distributorship, regarding or related to:
- (A) Respondents having an approval, sponsorship, status, affiliation, connection, association with, or having a certification by, any state, governmental agency, or other entity;
  - (B) The quantity of Respondents' installed projects, or the quantity of Respondents' affiliates, dealerships, or distributorships;
  - (C) Whether Respondents manufacture their own products;
  - (D) The standard, quality or grade, or the characteristics, uses, or benefits of Respondents' products, customer services or support (this is not intended to, and specifically does not cover or include the efficacy of Respondents' systems, which was not investigated);
  - (E) The profits that can be realized from the sale of Respondents' products and systems;
  - (F) Whether or not Respondents make money unless their consumer/dealers do;
  - (G) The length of time Respondents have been in business as Energy Automation Systems, Inc.;
  - (H) The ease of selling Respondents' products or systems; and
  - (I) The lack of a need for technical or sales experience in order to be able to sell Respondents' products of systems.
- 1.5 "Division" or "Division of Consumer Affairs" shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance and any employees acting on its behalf.
- 1.6 "Order" shall mean and refer to the Agreed Final Order entered in *State of*

*Tennessee v. Energy Automation Systems, Inc., a Tennessee corporation and Energy Project Assurance Corporation, a Tennessee corporation.*

- 1.7 "Petitioner" or "State of Tennessee" shall refer to the Office of the Tennessee Attorney General.
- 1.8 "Respondents" shall refer to Energy Automation Systems, Inc. and/or any and all officers, directors, owners, and management-level employees of Energy Automation Systems, Inc.; and Energy Project Assurance Corporation and/or any and all officers, directors, owners, management-level employees, parents and subsidiaries of Energy Project Assurance Corporation.
- 1.9 "Tennessee Consumer Protection Act", "TCPA", or "Consumer Act" shall refer to the Tennessee Consumer Protection Act of 1977, as amended, and related statutes found at Tenn. Code Ann. § 47-18-101, *et seq.*

## **2. JURISDICTION**

2.1 Jurisdiction of this Court over the subject matter herein and over the persons of the Respondents for the purposes of entering into and enforcing this Assurance and the accompanying Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the parties to apply for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and the accompanying Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondents agree to pay all court costs and reasonable attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and the accompanying Agreed Order against Respondents.

## **3. VENUE**

3.1 Pursuant to TENN. CODE ANN. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance lies properly in the Circuit Court of Davidson County, Tennessee.

#### **4. PERMANENT INJUNCTION AND REHABILITATION**

It is hereby agreed that upon approval of this Assurance by the Court, Respondents and anyone in concert with Respondents, shall be permanently and forever enjoined, restrained and bound from directly or indirectly engaging in the practices or affirmatively required as set forth herein, and further, permanently required to directly or indirectly satisfy the affirmative requirements set forth herein:

4.1 Respondents shall not make or cause to be made, directly or indirectly, any representations that Respondents or EASI has been approved by any state or governmental agency, unless such representations are true, not deceptive, fair, non-misleading and Respondents have documented written proof that substantiates and supports each such claim.

4.2 Respondents shall not make or cause to be made, directly or indirectly, any representations that Respondents or EASI has a relationship or affiliation with another company or entity, unless such representations are true, not deceptive, fair, non-misleading and Respondents have documented written proof that clearly substantiates and supports each such claim.

4.3 Respondents shall not make or cause to be made, directly or indirectly, any representations that Respondents, EASI and/or EASI affiliates have any quantity of installed projects, unless such representations are true, not deceptive, fair, non-misleading and Respondents have documented written proof that clearly substantiates and supports each such claim.

4.4 Respondents shall not make or cause to be made, directly or indirectly, any representations that Respondents or EASI manufactures their own products, unless such

representations are true, not deceptive, fair, non-misleading and Respondents have documented written proof that clearly substantiates and supports each such claim.

4.5 Respondents shall not make or cause to be made, directly or indirectly, any representations that Respondents or EASI provides the "ultimate in support" to their dealers/consumers, or terms of similar import, unless such representations are true, not deceptive, fair, non-misleading and Respondents have documented written proof that clearly substantiates and supports each such claim.

4.6 Respondents shall not make or cause to be made, directly or indirectly, any representations concerning the average or typical profit realized by Respondents dealer/consumers on the sale of any good or product such as the EASI system, unless such representations are true, not deceptive, fair, non-misleading and Respondents have documented written proof that clearly substantiates and supports each such claim.

4.7 Respondents shall not make or cause to be made, directly or indirectly, any representations concerning a range of profits realized by Respondents' dealer/consumers on the sale of any good or product such as the EASI system, unless such representations are true, not deceptive, fair, non-misleading and Respondents must have documented written proof that clearly substantiates and supports each such claim. Without limiting the scope of this paragraph, when Respondents represent a range of profits to dealer/consumers, such range must be a truly representative range and include that the least amount a dealer could make is zero.

4.8 Respondents shall not make or cause to be made, directly or indirectly, any representations that Respondents or EASI does not make money unless its consumer/dealers do, or statements of similar import, unless such representations are true, not deceptive, fair, non-

misleading and Respondents have documented written proof that clearly substantiates and supports each such claim.

4.9 Respondents shall not make or cause to be made, directly or indirectly, any representations regarding the number of Respondents or EASI dealerships or other goods, services or products sold, the number of active Respondents or EASI dealers or statements of similar import, unless such representations are true, not deceptive, fair, non-misleading and Respondents have documented written proof that clearly substantiates and supports each such claim.

4.10 Respondents shall not represent, directly or indirectly, that Respondent or EASI has been in business for any length of time except that length of time that Respondent or EASI has actually been in operation under the particular name it is promoting such as but not limited to Energy Automation Systems, Inc.

4.11 Respondents shall not make any representations regarding consumer/dealer support unless they affirmatively maintain adequate customer support staff, in order to timely respond to all consumer/dealer requests for support.

4.12 Respondents shall not represent that a dealer/consumer transaction confers or involves rights, remedies or obligations that it does not have or which are prohibited by law.

4.13 Respondents shall not represent that it will be easy or “EASI” (or term or phrase of similar import) to sell Respondents’ goods, services or products, unless such is the case and unless Respondents can clearly substantiate and document in writing that such is the case , and verify the method used to determine the accuracy of such representations.

4.14 Respondent shall not represent that dealers/consumer need not possess any

technical or sales experience (or term or phrase of similar import) to sell Respondents' goods, services or products, unless such is the case and Respondents can clearly substantiate and document in writing that such is the case, and verify the method used to determine the accuracy of such representations.

4.15 Respondents shall not retroactively change, alter or modify their EPAC insurance program offer to the detriment of consumers. Nothing herein shall prevent Respondents from changing, altering or modifying any refund, insurance or guarantee plan to provide greater benefits to consumers.

4.16 Respondents shall affirmatively, clearly and conspicuously disclose all terms and conditions of its EPAC insurance program offer prior to the consumer's purchase of any dealership or EASI product, equipment or installation which qualifies for EPAC coverage.

## **5. DEALER PAYMENTS**

5.1 The term "Eligible Dealer" shall mean each consumer who is alphabetically listed on Exhibit A by last name, first name, full address, telephone number and amount of refund, if known, (to protect consumer privacy and to prevent identity theft, the court filed version of Exhibit A shall only include last name, city, state and amount of refund) who purchased an EASI dealership and who filed a complaint postmarked or otherwise received on or before the date of entry of this Assurance with the Tennessee Attorney General, Division of Consumer Affairs, any entity of State of Tennessee government, any Attorney General's Office, any state complaint handling agency, any Better Business Bureau, Consumer Sentinel, the Internet Fraud Information Center, the National White Collar Crime Information Center, or the Federal Trade Commission. Supplemental lists of consumers who are Eligible Dealers and have filed complaints as required



herein shall be created by the Attorney General and provided to Respondent within a reasonable time of learning of the complaint from the above entities.

5.2 Respondents shall provide to the Attorney General checks payable to each Eligible Dealer for the amount indicated on Exhibit A within 30 days of entry of this Order.

5.3 Respondents shall provide to the Attorney General a check for each Eligible Dealer on any Attorney General supplemented list within 30 days of receipt of that particular list. Respondent shall refund to each Eligible Dealer the full amount paid to EASI for the purchased distributorship, and/or dealership. The Attorney General shall have a reasonable time, not to exceed one hundred twenty (120) days after entry of this Assurance, to contact other entities of state government and the Better Business Bureau to determine if such a supplemental list is necessary. In some instances the Attorney General may be required to serve statutory legal process to receive the necessary consumer information. In such situations, the Attorney General will work with Respondents to provide the information within as short a time frame as is reasonable under the circumstances, and the parties agree it may exceed one hundred twenty (120) days. Any consumer information received by the Attorney General from these entities shall be provided to Respondents within twenty (20) business days of receipt.

5.4 Each mailing of a refund check to an Eligible Dealer shall consist of the appropriate letter from the Attorney General of the State of Tennessee (all three (3) letters attached hereto as Collective Exhibit B) printed on letterhead chosen at the sole discretion of the Attorney General and the refund check. The Respondents shall be prohibited from including any other materials in this packet or mailing to consumers. The Respondents also agree not to send a separate mailing to consumers relating to the refund program.

5.5 Any Eligible Dealer who was inadvertently omitted from Exhibit A shall be eligible for the restitution set forth in this Section for a period of sixty (60) days following entry of this Assurance. Upon discovery of any such inadvertency, Respondents shall offer the Eligible Dealer a refund in conformity with this Section. Further if any list including Exhibit A and any supplemental list incorrectly lists the Eligible Dealer's refund amount, the Respondent shall pay the Eligible Dealer as provided in Section 5.3.

5.6 If Respondents have previously made any refund payments to any dealer on Exhibit A or any supplemental list, the amount of such previous refund payment shall act as a setoff from the amount listed on Exhibit A or the supplemental list. Respondents must provide proof of the previous refund payment in order for that previous refund amount to act as a setoff. If there has been a judgment from a court of competent jurisdiction on the merits of the case which found that Respondents did not engage in unfair or deceptive acts or practices regarding a particular consumer and that Respondents are not obligated to make a payment to that specific consumer, then that consumer shall be excluded from this Dealer Payment program.

5.7 The mailing required by Section 5 shall be mailed via certified, return receipt request mail postage paid through the United States Postal Service. All envelopes will be chosen at the sole discretion of the Attorney General with a return address of **"TN Attorney General Refund Program, Attn: EASI, Post Office Box 20207, Nashville, TN 37202-0207"** and must be clearly marked **"Postmaster: Address Correction Requested and Please Forward"** and **"Important Information about TN Attorney General Refund Program"** In the event any envelope is returned with a corrected or forwarding address, the envelope shall again be mailed to the consumer via certified mail, return receipt requested postage paid mail through the United

States Postal Service to the correct address.

5.8 All refund checks shall be honored for a minimum of 90 days after issuance and shall be in the form of cashier's or certified checks in the required amount made payable to the Eligible Dealer.

5.9 In the event an Eligible Dealer fails to cash their refund check or the Respondents are unable to locate the Eligible Dealer, those funds due such consumers shall be treated as unclaimed property in the possession of the State of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101, *et seq.* These funds may be delivered to the Treasurer prior to the statutory due date of one (1) year set forth in Tenn. Code Ann. § 66-29-110, covering unclaimed property held by courts, public officers and agencies. The Respondents shall provide a report to the Attorney General within six (6) months of the entry of the Order which details the amount delivered to the Treasurer for treatment as unclaimed property under the State statute. The Respondents shall continue to provide this information every six (6) months until all funds have been claimed and/or returned to the Respondents.

5.10 The following unique situations shall be handled as identified when the Respondents issue restitution checks to Eligible Dealers:

- (A) If an Eligible Dealer who is eligible for restitution is now deceased, the refund payment shall be made to the estate of the deceased person.
- (B) If the purchase was made by a minor, the restitution check shall be made jointly payable to the minor child's parents or legal guardians. If the child is in the sole custody of one parent or only has one parent or one legal guardian, the restitution check shall be made payable to the sole custodian parent or single parent.
- (C) If the purchase was made by a married couple which are now divorced, a single

restitution check shall be made jointly payable to both the former husband and former wife. Unless a protective order is in place relating to one of the parties, in that situation, two checks shall be issued, half to each former spouse.

- (D) If the purchase was made jointly by two or more unrelated persons, a single restitution check shall be made jointly payable to those persons.

5.11 The Respondents are responsible for all costs associated with the refund process set forth in this Section, including but not limited to, all costs associated with the all costs associated with the mailing and content of the mailings set forth in Section 5, the cost of the refunds, all letterhead, envelopes, copying charges, postage and costs associated with the issuance of refund checks.

5.12 Within three (3) months of entry of this Order, the Respondents shall file with the Attorney General the following information:

- (A) A report containing the name and address of each consumer who has been sent a Dealer Payment. Such report shall verify and certify the amount of each individual consumer's Dealer Payment and the total amount of all such payments provided to date. Such reports shall be supplemented every three (3) months until all consumer requests for Dealer Payments have been properly addressed. Additionally, Respondents shall verify and certify compliance with each provision of this Assurance with respect to dealer payments.
- (B) An acknowledgment that each officer, director or management-level employee of Respondents have received a copy of this Order and has certified to having read it, as set forth in Paragraph 12.4 of this Assurance.

5.13 Within ten (10) days of receipt of a request from the Attorney General's Office or the Division of Consumer Affairs Division for evidence that a specific Eligible Dealer or Dealers have received the required mailing and/or their refunds, the Respondents shall provide written verification by providing any documents, books or records necessary to establish to the satisfaction of the Attorney General or Director of the Division of Consumer Affairs that the

refund process was completed in compliance with this Order. Such documents shall include, but not be limited to, copies of the front and back of canceled checks and/or certified return receipt mailing records indicating that the specific consumer or consumers received the required item. This paragraph shall in no way limit the Attorney General's ability to obtain documents, records and/or testimony pursuant to Section 7.1 or any other law, regulation or rule.

5.14 The lists and reports under this Assurance provided to the State of Tennessee and in the possession of the Respondents shall not be released to any person to protect the interest of consumer privacy, to prevent further marketing to these consumers and possible identity theft.

5.15 The Respondents also agree that the consumer names, addresses, telephone numbers and other personally identifiable information gathered or otherwise obtained during this consumer relief program will not be used for any marketing purposes or provided to any other person for any reason including but not limited for the purposes of marketing these consumers now or in the future.

5.16 Nothing herein shall prohibit the Respondents from making a full refund to any other consumer.

5.17 The Respondents represent and warrant to the Attorney General that they are financially able to complete and fulfill the Restitution/Refund Program set forth in Section 5. Respondents further acknowledge and understand that the State expressly relies on this representation and warranty, and that if it is false, unfair, deceptive, misleading or inaccurate, the State has the right to move to vacate or set aside, in whole or in part, this Assurance or request that Respondents be held in contempt, if the State so elects.

5.18 The parties may agree in writing by mutual agreement to extend any time line or

deadline provided no change shall be to the detriment of consumers or Eligible Dealers.

5.19 The restitution program totals at least One hundred ninety nine thousand, three hundred seventy five dollars (\$199,375.00) in refunds and/or credit/set-offs to consumers.

## **6. PAYMENT TO THE STATE**

6.1 Respondents shall pay to the State of Tennessee the total amount of One Hundred Fifteen Thousand Dollars (\$115,000.00) payable as set forth in Section 7 of this Order. Said payment shall be divided as follows:

- (A) **Tennessee Attorney General Attorneys' fees and costs.** Seventy Thousand Dollars (\$70,000.00) shall be paid and represents the attorneys' fees and costs of the Tennessee Attorney General in this matter. Said payment shall be used at the sole discretion of the Attorney General for consumer protection purposes.
- (B) **Division of Consumer Affairs Consumer Education Funding.** Ten Thousand Dollars (\$10,000.00) shall be paid to the Tennessee Division of Consumer Affairs to fund a consumer education project or otherwise fund consumer protection investigation and litigation efforts under the Tennessee Consumer Protection Act of 1977 at the sole discretion of the Director of the Division of Consumer Affairs.
- (C) **Payment to the General Fund.** Thirty-Five Thousand Dollars (\$35,000.00) shall be paid to the General Fund of the State of Tennessee.

## **7. PAYMENT TO THE STATE, FORBEARANCE ON EXECUTION AND DEFAULT**

7.1 No execution or garnishment on the monetary portion of this Assurance and the accompanying Agreed Order shall issue so long as the Respondent makes payment in accordance with paragraph 7.2 herein. In the event Respondent fails to make any such payment within twenty (20) days of its due date, the entire monetary balances under this Assurance and the accompanying Agreed Order then remaining become due and payable without notice and may be collected by execution, garnishment or other legal process, together with interest pursuant to

Tenn. Code Ann. § 47-14-121 from the date of entry of this Assurance and the accompanying Agreed Order. Respondent agrees to pay all attorneys' fees and costs, including but not limited to court costs, associated with any such collection efforts.

7.2 Respondents shall pay to the State of Tennessee the total amount of \$115,000.00 as set forth herein. Timely payment shall be delivered to the Consumer Advocate & Protection Division, Office of Attorney General as follows:

- (A) First payment of \$40,000.00 on the date of filing of the Assurance;
- (B) Second payment of \$35,000.00 payable no later than May 31, 2008; and
- (C) The third and final payment of \$40,000.00 payable no later than May 31, 2009 as set forth in the accompanying Agreed Order. All payments shall be made by certified or cashier's check made payable to the "Treasurer - State of Tennessee".

7.3 The payments shall be applied as follows to the State's payments set forth in Section 6, first to cover the Tennessee Attorney General's attorneys' fees, second to cover the Division of Consumer Affairs consumer education and protection funding and third, the payment to the General Fund.

7.4 Respondents shall be required to retain proof of all payments to consumers and to the State of Tennessee in the form of canceled checks for each payment for a full two (2) years following their final payment to the State. Respondents shall provide proof of all payments to the State within ten (10) days of a request for such information.

7.5 On the day of entry of this Assurance, Respondents shall provide the State with a current address and telephone number where it/he/she can be contacted and served with process in the event of default until the monetary portions of this Assurance and the accompanying

Agreed Order are completed. Respondents shall further be required to provide any new address and telephone number within two (2) days of relocating to a new address or of obtaining a new telephone number. Service upon the Respondents for the purposes of enforcing the monetary portion of this Assurance in the event of default shall be effective upon mailing a notice via certified mail return receipt requested and waiting 30 days, if no response is received the State may obtain a default judgment or other adverse ruling sought by the State.

7.6 Respondents agree that if Respondents default on any monetary payment herein the State may set aside this Assurance and obtain a judgment including full restitution for all consumers including statutory interest and the full amount of civil penalties and other remedies that would have been available to the State prior to entry of this Assurance.

7.7 Respondents agree that any restitution payments required to persons under this Assurance for each incident are priority claims under 11 U.S.C. § 507 (a)(6) to the extent of the statutory amount. Any amounts due persons in excess of the 11 U.S.C. § 507(a) and (b) amounts may have different priorities.

7.8 In the event of default of any monetary provision of this Assurance or any substantive proceeding based upon the monetary amount, Respondents agree that all statements set forth in the State's Petition shall be deemed to be admitted for the limited purpose of establishing non-dischargeability of all sums paid hereunder. Specifically, Respondents agree that all sums are nondischargeable under 11 U.S.C. § 523(a)(2) and 11 U.S.C. § 523(a)(7). Respondents further agree that in any subsequent proceeding based upon the monetary amount set forth in this Assurance, Respondents shall not contest the State's right to obtain the full amount due and owing, shall reaffirm any such debt if necessary in order to completely fulfill



Respondents' monetary obligations to the State and shall not object in any manner or form that is contradictory to the terms of this Assurance to any proof of claim filed by the State.

7.9 Respondents agree that any and all such sums payable under this Assurance are non-dischargeable in a bankruptcy case.

7.10 Respondents have represented and warranted that they have reviewed their financial situation and that:

- (A) they currently are solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain solvent following its payment to the State of Tennessee hereunder. Further, the parties expressly warrant that in evaluating whether to execute this agreement, the Parties have:
  - (i) intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Respondents, within the meaning of 11 U.S.C. § 547(b)(1), and
  - (ii) concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange; and
- (B) the following are correct statements:
  - (i) the debtors were not insolvent within the meaning of 11 U.S.C. § 548(a)(1)(B)(ii) on the date of these promises, covenants and obligations and did not become insolvent within the meaning of that section as a result of these promises, covenants and obligations; and
  - (ii) the Respondents are receiving reasonably equivalent value, so as to take these promises, covenants and obligations outside the purview of 11 U.S. C. § 548 (a)(1)(B)(i).

7.11 Respondents shall give written notice of any bankruptcy filing to: Deputy Attorney General, Consumer Advocate & Protection Division, c/o TN Attorney General's Office, and the Deputy Attorney General, Bankruptcy Division, c/o Tennessee Attorney General's Office,

Post Office Box 20207, Nashville, TN 37202-0207.

7.12 Until ninety-five (95) days after the final payment required under Section 7 is received, Respondents agree to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to the payments required by this Assurance, Respondents' assets and ability to pay. Respondents shall make any requested information available within one (1) week of the request, at the Office of the Attorney General or alternatively, at any other location within the State of Tennessee that is mutually agreeable in writing to Respondents and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

7.13 Without limiting the scope of Section 5 and Section 8, upon default of any monetary provision of this Assurance, Respondents agree to provide testimony under oath for the purposes of determining Respondents' financial status and to locate any assets available to the State for execution and seizure to fulfill the Respondents' monetary obligations under this Assurance. Respondents shall be required to pay all costs associated with court reporting and transcription of such sworn statements. Respondents also agree to, within five (5) business days, provide written sworn responses to the State's request for documents or other information in the event of default.

## **8. MONITORING AND COMPLIANCE**

8.1 Upon request, Respondents agree to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State reasonably relating to compliance with this Assurance. Respondents

shall make any requested information available within two (2) weeks of the request, at the Office of the Attorney General, Consumer Advocate and Protection Division, 425 Fifth Avenue North, Nashville, Tennessee 37243, or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondents and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

8.2 The State of Tennessee has the right to test shop Respondents for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondents. Further, the State of Tennessee may record any or all aspects of its solicitations or visit(s) with Respondent in audio or video form without notice to Respondents. The Respondents agree to void any sale that is commenced by a test shopper and refund money spent by the test shopper at the conclusion of the sale upon notification that it was test shopping conducted by the State.

## **9. PRIVATE RIGHT OF ACTION**

9.1 Pursuant to TENN. CODE ANN. §§ 47-18-109 and 47-18-107(e), nothing in this Assurance shall be construed to affect any private right of action that a dealer/consumer/person may hold against Respondents. Nor does this Assurance or the settlement described herein create for any dealer/consumer, or provide any dealer/consumer with any grounds for relief pursuant to, any private right of action against Respondents.

## **10. PENALTY FOR FAILURE TO COMPLY**

10.1 Pursuant to TENN. CODE ANN. § 47-18-107(c), Respondents understand that

upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is prima facie evidence of a violation of the Tennessee Consumer Protection Act.

10.2 Pursuant to TENN. CODE ANN. § 47-18-107(f), Respondents understand that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and costs. Respondents agree to pay all court costs and attorneys' fees associated with any petitions to enforce this Assurance and Order against the Respondents, provided Petitioner prevails on any of the issues.

10.3 If the Attorney General has a reason to believe that Respondents have failed to comply with any of the terms of this Assurance, and if, in the Attorney General's sole discretion, the failure to comply does not imminently threaten a dealer/consumer's legal rights or the public health or safety, including the financial health and safety, the Attorney General will, prior to instituting legal proceedings, first notify the Respondents in writing of such failure to comply and Respondents shall then have ten (10) business days from receipt of such notice to provide a good faith written response to the Attorney General. The response shall include an affidavit containing, at minimum:

- (A) a statement that Respondents are in full compliance with the Order; or
- (B) a detailed explanation of how the alleged violation(s) occurred and a statement that the alleged breach has been cured and how.

Nothing herein shall prevent the Attorney General from agreeing in writing to provide the Respondents with additional time beyond the ten (10) business days period to respond to the

notice. Further, this provision shall not alter or limit the Attorney General's authority to commence a proceeding for such violations or otherwise exonerate any breach of this Assurance or Agreed Order.

10.4 The Attorney General agrees to act in good faith and with due regard to fairness when considering whether to initiate court proceedings for a violation of this Assurance. It is not the Attorney General's intention to initiate contempt proceedings regarding violations of the Order for a single, isolated, and unintentional mistake.

## **11. REPRESENTATIONS AND WARRANTIES**

11.1 Respondents represent and warrant that the execution and delivery of this Assurance is their free and voluntary act, and that this Assurance is the result of good faith negotiations. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorneys or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

11.2 Respondents represent that signatories to this Assurance have authority to act for and bind the Respondents.

11.3 Respondents warrant and represent that Energy Automation Systems, Inc. and Energy Project Assurance Corporation are the proper parties to this Assurance and the accompanying Agreed Order.

11.4 Respondents represent that Energy Automation Systems, Inc. and Energy Project Assurance Corporation are the true legal names of the entities entering into this Assurance and the accompanying Agreed Order.

11.5 Respondents represent and warrant that they will not sell EASI Dealerships to consumers from any state that requires EASI to make business opportunity disclosures as a condition to making such sale, unless EASI shall have made complete and accurate disclosures prior to making such sale.

11.6 Respondents further acknowledge and understand that the State expressly relies upon all of the representations and warranties set forth herein, and that if they are false, unfair, deceptive, misleading or inaccurate, the State has the right to move to vacate or set aside, in whole or in part, this Assurance or request that Respondents be held in contempt, if the State so elects.

## **12. GENERAL PROVISIONS**

12.1 Respondents will not participate directly or indirectly in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

12.2 Neither Respondents nor anyone acting on their behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondents.

12.3 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondents' advertising or other business practices.

12.4 Within thirty (30) days of the entry of this Assurance, Respondents shall submit a copy of this Assurance to each of its officers, directors, management-level employees and any

third parties who act directly or indirectly on behalf of the Respondents as an agent or independent contractor in connection with the recruitment of EASI dealers or provides dealer support services to EASI dealers. Within forty-five (45) days of entry of this Assurance, Respondents shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

12.5 This Assurance and the accompanying Agreed Order may only be enforced by the parties hereto.

12.6 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

12.7 This document shall not be construed against the “drafter” because both parties participated in the drafting of this document.

12.8 Ninety-five (95) days after full payment of all consumer refunds and completion of the entire consumer refund program set forth in Section 5 and full payment to the State pursuant to Sections 6 and 7, and without limiting the scope of the private right of action provision under the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-109 and this Order, the Attorney General will release Respondents from any and all civil consumer protection claims under the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*, arising on or before the date of the entry of this Assurance for the Covered Conduct. Nothing herein shall prevent the Attorney General from seeking relief for violations of this Assurance and Agreed Order or for violations of the Tennessee Consumer Protection Act that occur after the date of the entry of this Assurance or for non-Covered Conduct.

12.9 Respondents hereby release the State of Tennessee, the Tennessee Attorney General and his staff, and the Tennessee Division of Consumer Affairs and its staff, from any and all claims Respondents may have for any actions, including investigations, arising under the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*, on or before the date of the entry of this Assurance.

12.10 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee, with the exception of the claims expressly released in Paragraph 12.8. In addition, this Assurance shall not bar the State or other governmental entity from enforcing laws, regulations or rules against Respondents.

12.11 This Assurance shall be binding and effective upon approval by the Court. In the event the court does not approve this Assurance, this Assurance shall be of no force and effect.

12.12 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

12.13 Respondents waive and will not assert any defenses Respondents may have which may be based, in whole or in part, on: Amendments V and VIII of the Constitution of the United States; Sections 10 and 16 of Article I or Section 14 of Article VI of the Tennessee Constitution; or the principles set forth in *Hudson v. United States*, 118 S.Ct. 488 (1997) and *Austin v. United States*, 509 U.S. 602 (1993), and agree that the amount Respondents have agreed to pay under the terms of this Assurance is not punitive in effect or nature.

12.14 No waiver, modification, or amendment of the terms of this Assurance shall be



valid or binding unless made in writing, signed by the both parties, approved by this Honorable Court and then only to the extent set forth in such written waiver, modification or amendment.

12.15 Any failure by any party to this Assurance to insist upon the strict performance by any other party of any of the provisions of this Assurance and the accompanying Agreed Order shall not be deemed a waiver of any of the provisions of this Assurance and the accompanying Agreed Order, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance and Agreed Order and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys' fees to the State.

12.16 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not be contained herein.

12.17 Respondents waive any and all challenges in law or equity to the entry of the Assurance and Agreed Order by the courts. Further, Respondents waive any right to appeal, petition for certiorari, move to reargue or rehear or to otherwise be heard in connection with any judicial proceedings regarding the entry of this Assurance and Agreed Order. This paragraph does not preclude Respondents from defending, arguing or appealing any action brought to enforce the AVC.

12.18 Time shall be of the essence with respect to each provision of this Assurance that requires action to be taken by either party within a stated time period or upon a specified date.

12.19 This Assurance sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance which are not fully expressed herein or attached hereto.

12.20 Nothing in this Assurance or the accompanying Agreed Order shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

### **13. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES**

13.1 Nothing in this Assurance and the accompanying Order shall be construed as relieving Respondents of the obligation to comply with all state and federal laws, regulations and rules.

### **14. FILING OF ASSURANCE**

14.1 Following the execution of this Assurance, the Attorney General shall file this Assurance in the Circuit Court for Davidson County for the Court's approval. Respondents hereby waive any and all rights which they may have to be heard in connection with judicial proceedings upon the Petition. Respondents agree to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondents shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondents agree that they consent to the entry of this Assurance and Agreed Order without further notice.

### **15. APPLICABILITY OF ASSURANCE TO RESPONDENTS AND THEIR SUCCESSORS**

15.1 Respondents agree that the duties, responsibilities, burdens and obligations

undertaken in connection with this Assurance shall apply to them, and to each of their officers, directors, and managers. The State will enforce this Agreed Final Judgment with due regard to fairness and will not seek sanctions for a single violation of this Agreed Final Judgment for an isolated, non-material and unintended mistake.

#### **16. NOTIFICATION TO ATTORNEY GENERAL AND TO RESPONDENTS**

16.1 For five (5) years following execution of this Assurance, Respondents shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may affect compliance with obligations arising out of this Assurance.

16.2 Any notices required to be sent to the Attorney General or the Respondents by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

<b>For the Attorney General:</b>	<b>For the Respondents:</b>
Deputy Attorney General Office of the Attorney General Consumer Advocate and Protection Division Post Office Box 20207 Nashville, Tennessee 37202-0207 Telephone: (615) 741-1671	Energy Automation Systems, Inc. ATTN: Dr. Paul Bleiweis 145 Anderson Lane Hendersonville, TN 37075  with a copy to: John R. Jacobson Bowen, Riley Warnock & Jacobson, PLC 1906 West End Avenue Nashville, TN 37203

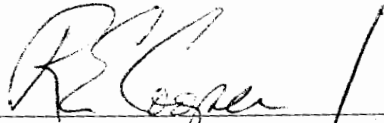
### **17. FACSIMILE/PDF SIGNATURES**

17.1 The parties agree and the Court approves that facsimile and/or PDF copies of a parties' signature may be attached to this Assurance. The original signature pages of the parties will be provided to the Attorney General as soon as practicable.

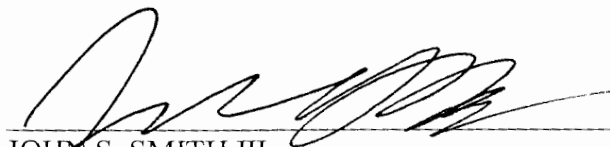
### **18. COURT COSTS**

18.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondents. No costs shall be taxed against the State as provided by TENN. CODE ANN. § 47-18-116. Further, no discretionary costs shall be taxed to the State, or against Respondents except as specifically provided herein.

FOR THE TENNESSEE ATTORNEY GENERAL:

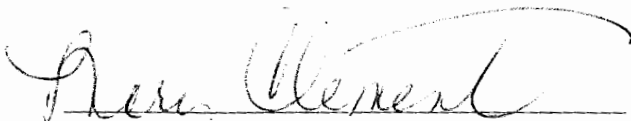


ROBERT E. COOPER, JR.  
Attorney General and Reporter  
B.P.R. No. 010934



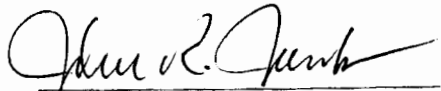
JOHN S. SMITH III  
Assistant Attorney General  
B.P.R. No. 023392  
Office of the Attorney General  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, TN 37202-0207  
(615) 532-3382

Approved by:



MARY CLEMENT  
DIRECTOR  
Division of Consumer Affairs  
Department of Commerce and Insurance  
500 James Robertson Parkway  
5th Floor, Davy Crockett Tower  
Nashville, TN 37243-0600  
(615) 741-4737

FOR RESPONDENTS:



JOHN R. JACOBSON

Attorney for Respondents


B.P.R. No. 014635

Bowen, Riley, Warnock & Jacobson, PLC

1906 West End Avenue

Nashville, Tennessee 37203

(615) 320-3700



Name: Paul B. Steccaro

President

Energy Automation Systems, Inc.

145 Anderson Lane

Hendersonville, TN 37075

Tel: 615-822-7250

Fax: 615-822-7252

Federal Taxpayer ID Number: \_\_\_\_\_



Name: Paul B. Steccaro

President

Energy Project Assurance Corporation

145 Anderson Lane

Hendersonville, TN 37075

Tel: 615-822-7250

Fax: 615-822-7252

Federal Taxpayer ID Number: \_\_\_\_\_

102310

## **EXHIBIT A**

# EASI EXHIBIT "A"

## REFUND CHART

Last Name	City	State	Credit or Set Off	Refund Amount
Beaudoin	Monson	Massachusetts	\$0.00	\$29,875.00
Begin	Crecent Innisfail	Alberta, Canada	\$0.00	\$29,875.00
Failla	Ridgefield	Connecticut	\$0.00	\$30,000.00
Hunsberger	New Dundee	Ontario, Canada	\$29,875.00	\$0.00
Norris	Pineville	Oregon	\$0.00	\$30,000.00
Saxton	Sioux Falls	South Dakota	\$19,875.00	\$0.00
Sweet	Davie	Florida	\$0.00	\$29,875.00
<b>TOTALS</b>			<b>\$49,750.00</b>	<b>\$149,625.00</b>
<b>TOTAL AMOUNT PAID</b> \$199,375.00		<b>TOTAL REFUND, CREDIT OR SET OFF</b> \$199,375.00		

**TOTAL AMOUNT DUE FROM EASI**  
**FOR THE PAYMENT OF OUTSTANDING REFUNDS OWED**  
**\$149,625.00**



## **EXHIBIT B**

(insert date)

**CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED**

**IMPORTANT NOTICE ABOUT YOUR  
EASI DEALERSHIP CONTRACT**

EASI Dealer  
Address  
City, State Zip Code

**RE: Settlement between the State of Tennessee and Energy Automation  
Systems, Inc.**

Dear \_\_\_\_\_:

You are receiving this letter because you purchased a dealership from Energy Automation Systems, Inc. ("EASI"). The Tennessee Office of the Attorney General and the Tennessee Division of Consumer Affairs conducted an inquiry regarding some of EASI's marketing and promotional materials available to prospective dealers at the time you purchased your dealership. In connection with the inquiry, EASI provided documents and information to the Attorney General's Office. As a result of this inquiry, while denying wrongdoing, EASI has entered into an Assurance of Voluntary compliance ("Assurance") with the State of Tennessee, and as part of that agreement, EASI is offering you the opportunity to rescind or terminate your EASI dealership contract

Under the terms of the settlement, you can rescind or terminate your EASI dealership contract and obtain a refund of \$(insert dollar amount of individual refund). Enclosed please find your refund check from EASI. If you wish to rescind or terminate, all you need to do is cash the enclosed check within 120 days of receipt of this check.

If you cash the enclosed check, then your EASI dealership will be terminated immediately, to the extent it has not already been terminated. We hope that this settlement will end any disputes between you and EASI. However, the State's settlement does not release any private right of action, if any exists, you may have against EASI. Please note the check is only good for 120 days, as a result you need to cash the check before it expires.

In the event you do not want your EASI dealership contract rescinded or terminated, please return the refund check to EASI in the self addressed stamped envelope with a letter stating that you want your EASI dealership contract to remain in force and affect.

Finally, tax consequences may result from your accepting this check. Neither the State of Tennessee nor EASI are responsible for those tax consequences. You should consult a tax professional for advice on the tax issue. If you have any questions regarding this settlement, please contact the Tennessee Division of Consumer Affairs by calling 615-741-4994.

Very truly yours,

(STATE REPRESENTATIVE(S))

Enclosure: refund check and self-addressed envelope

cc: John Smith  
Mary Clement, Director  
Tennessee Division of Consumer Affairs

110497

(insert date)

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**IMPORTANT NOTICE ABOUT YOUR  
EASI DEALERSHIP CONTRACT**

P.S.  
USA

**RE: Assurance between the State of Tennessee and Energy Automation  
Systems, Inc.**

Dear Mr. S.:

You are receiving this letter because you purchased a dealership from Energy Automation Systems, Inc. ("EASI"). The Tennessee Office of the Attorney General and the Tennessee Division of Consumer Affairs conducted an inquiry regarding some of EASI's marketing and promotional materials available to prospective dealers at the time you purchased your dealership. As a result of this inquiry, while denying wrongdoing, EASI has entered into an Assurance of Voluntary Compliance ("Assurance") and as part of that agreement, EASI would be responsible for refunding your dealer fee in the amount of \$19,875. The State of Tennessee understands, however, that you entered into an agreement with EASI through which EASI previously refunded your dealer fee of \$19,875 to you. Consequently, you will not receive a further refund from EASI.

If you have not received your refund or if you have any questions regarding this settlement, please contact the Tennessee Division of Consumer Affairs by calling 615-741-4737.

Very truly yours,

STATE REPRESENTATIVE(S)

cc: John Smith  
Mary Clement, Director  
Tennessee Division of Consumer Affairs

112770

(insert date)

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**IMPORTANT NOTICE ABOUT YOUR  
EASI DEALERSHIP CONTRACT**

S.H.  
Canada

**RE: Assurance between the State of Tennessee and Energy Automation  
Systems, Inc.**

Dear Mr. H.:

You are receiving this letter because you purchased a dealership from Energy Automation Systems, Inc. ("EASI"). The Tennessee Office of the Attorney General and the Tennessee Division of Consumer Affairs conducted an inquiry regarding some of EASI's marketing and promotional materials available to prospective dealers at the time you purchased your dealership. As a result of this inquiry, while denying wrongdoing, EASI has entered into an Assurance of Voluntary Compliance ("Assurance") and as part of that agreement, EASI has agreed to provide you a credit or set off for the amount of your dealership fee of \$29,875.

The State of Tennessee understands that your dealership contract has already been terminated. We also understand that you and EASI have been involved in separate private litigation. Counsel for EASI provided the Attorney General's office with a certified copy of the attached Final Judgment. [The copy of the Final Judgment that will be submitted as an attachment to this exhibit will be redacted to remove all personally identifiable information that could be used for identity theft.] Under EASI's agreement with the State of Tennessee, you will receive a credit or set off in the amount \$29,875

toward any valid and enforceable judgment EASI has against you. If you have any questions about how this agreement affects your legal rights, if any, you should consult your private attorney. The State's Assurance does not waive any private rights of action (if any) you may have but the amounts will operate as a set off against any amounts (if any) owed by you to EASI under a valid and enforceable judgment.

Finally, neither the State of Tennessee nor EASI are responsible for the tax consequences, if any, that result from this credit or set off. You should consult a tax professional for advice on the tax issue. If you have any questions regarding this settlement, please contact the Tennessee Division of Consumer Affairs by calling 615-741-4737.

Very truly yours,

STATE REPRESENTATIVE(S)

cc: John Smith  
Mary Clement, Director  
Tennessee Division of Consumer Affairs

112771